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IN THE

Supreme Court of the United States

October Term, 1970

~~No. 1614~~ 70-130

UNITED STATES OF AMERICA,

Petitioner,

v.

SCOTLAND NECK CITY BOARD OF EDUCATION, ET AL.,

Respondents.

BRIEF OF SCOTLAND NECK CITY BOARD OF EDUCATION, ET AL., RESPONDENTS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Scotland Neck City Board of Education, Respondent herein, opposes the granting of the Petition for Writ of Certiorari filed by the United States of America, Petitioner, to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinions below are set forth in the Appendices to the Petition. Respondent has included in Appendix A the order of the Court of Appeals dated April 21, 1971, staying the mandate in the above cases upon conditions stated.

JURISDICTION

The jurisdictional requisites are set forth adequately in the Petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are set forth in the Petition.

QUESTION PRESENTED

We challenge the correctness of the phrase " . . . even if the establishment of a unitary system is thereby impaired . . . " embodied in Petitioner's statement of the question presented. We submit that the following is a proper statement of the question presented:

Whether any person is deprived of a constitutional right by a State statute creating a new school district under these known conditions: (1) with the boundary lines of the new school district the same as the long-established boundaries of the City, and (2) with the school operation to be completely unitary and to include all resident students without any regard to race, and (3) with a City population of 50% black and 50% white, and (4) when there is nothing in the record to suggest that the residential composition of the City has resulted in any part from law-imposed segregation.

STATEMENT

For a more complete understanding of the situation we desire to supplement Petitioner's "Statement."

For many years, until 1936, the City of Scotland Neck was a separate school district operating independently of the Halifax County School system into which it was then merged. In 1963 plans were formulated for the creation of a separate unit for the schools of Scotland Neck, but did not crystalize until too late to seek legislative action. An effort to achieve a separate school unit including Scotland Neck was defeated in 1965. In 1968 plans were begun to achieve

legislative action. They culminated in the 1969 Act (Pet. App. D, pp. 69a-72a).

Those 1963, 1965, and 1968 movements preceded the decision of this Court in *Green v. School Board of New Kent County*, 391 U.S. 430, May 27, 1968, and its companion cases.

The District Court, in its opinion, stated, by footnote, that if the Scotland Neck act should be held to be constitutional there would be presented no difficulty in handling transfers in and out, under the supervision of the District Court, in such a manner as to prevent future unreasonable racial imbalance (Pet. App. D, p. 75a).

The majority opinion in the Court of Appeals stated:

"Although there are more white students than black students in Scotland Neck, the white majority is not large, 57.3 percent white and 42.6 percent black. Since all students in the same grade would attend the same school, the system would be integrated throughout. There is no indication that the geographic boundaries were drawn to include white students and exclude black students as there has been in other cases where the courts have ordered integration across school district boundaries. *Haney v. County Board of Education of Sevier County*, 410 F. 2d 920 (8th Cir. 1969). The city limits provide a natural geographic boundary. There is nothing in the record to suggest that the greater percentage of white students in Scotland Neck is a product of residential segregation resulting in part from state action. See *Brewer v. School Board of the City of Norfolk*, 397 F. 2d 37 (4th Cir. 1968)" (Pet. App. A, p. 15a).

The removal of all school children living in Scotland Neck from the Halifax County School District would cause the ratio of black students in the remaining school district to increase 3 percentage points. In 1968-69 the ratio was 77%

black. The removal of all Scotland Neck students from the Halifax District would result in a black ratio of 80% in that district (Pet. App. A, p. 14a).

ARGUMENT

I. CONSTITUTIONAL JUSTIFICATION OF FORCED PUPIL ASSIGNMENTS

The *Swann* case, *infra*, disposes of the issue in this case.

The question presented in this case is settled, we contend, by the law as declared by this Court in the case of *Swann v. Charlotte-Mecklenburg Board of Education No. 281*, October Term, 1970, decided April 20, 1971 (not yet reported).

It is undisputed, as disclosed by the opinion of the District Court, the opinion of the Court of Appeals and the dissents in the Court of Appeals (Petitioner's Appendices D, p. 63a; A, p. 1a; and B, p. 27a, respectively) that:

A. the new Scotland Neck School District has a present population ratio of about 50% black and 50% white and that the anticipated school population would be approximately 43% black and 57% white (if the school district can be established before a very substantial number of the white students leave it); and

B. the Scotland Neck City limits, (boundaries of the new school district) were of long standing and were drawn without any racial considerations; and

C. the residential composition established in Scotland Neck did not reflect any effort of any law-compelled segregation or any other law cause; and

D. the new school district would enroll all resident children and would permit transfers in and out only

in accordance with a plan to be approved and thereafter observed by the District Court; and

E. the new Scotland Neck School District would be completely unitary in a community with a strong intent to make that unitary school work and work now; and

F. withdrawal of the Scotland Neck School District from the Halifax County School District would change the ratio of black students in that County District from 77% to 80%.

We can see no sound contention which can be made by the Petitioner that any person has been deprived of any constitutional right unless some black student, outside of the boundaries of Scotland Neck, should show that he has a right to demand that some white student or students be assigned outside of their residence area, Scotland Neck, to one or more schools in the outer areas, in order to lower the black ratios there.

As we understand the opinion of this Court in the *Swann* case, *supra,* such demand could not be enforced as a constitutional right unless such relief is a part of the dismantling of a former law-imposed segregated structure in the school district. That must mean that it is a part of the uprooting or the tearing down of a part of a condemned segregated system.

But the residential composition of the City of Scotland Neck was not caused by a segregated school system. Its population grew from natural causes. The very creation of the new Scotland Neck School District requiring attendance by every resident student in the same unitary school was a complete dismantling of any segregation structure in Scotland Neck. Thereafter there was left no root or branch of school segregation in that City.

Therefore to assign students resident in Scotland Neck to a school in Scotland Neck is not any perpetuation of any

root or branch of the segregated system. It is the operation of a natural right inherent in the children resident in Scotland Neck.

The natural assignment of a Scotland Neck resident pupil to a school in his city is his constitutional right, absent a remaining root or branch, in Scotland Neck, of a law-imposed segregated system.

There is nothing in the opinions or in the appendices to the Petition which shows in Scotland Neck any remaining remnant of the old law-imposed segregation. Therefore to require the assigning of Scotland Neck resident students to schools beyond the city boundaries cannot be supported as a part of dismantling a law-imposed segregation structure.

II. REQUIREMENT OF FIXED RATIOS

There is no constitutional requirement of uniform racial ratios in all portions of a county or district.

As we understand the pronouncements of this Court in the *Swann* case, *supra*, there is no constitutional requirement that there shall be established, in a county or in any area, fixed or uniform racial ratios. Then, it would follow that there is nothing constitutionally wrong in having a 43-57 ratio in urban Scotland Neck, and in having an 80-20 ratio in the primarily rural remainder of the Halifax County School District. Such divergence in ratios would be unconstitutional only if the Scotland Neck residential composition was caused in some part by past *de jure* segregation. But, we have seen that there is no evidence in this case that *de jure* segregation affected in any way the resident composition in the City of Scotland Neck.

If urban students are to be moved across city residential lines to several rural communities solely to make more uniform the racial balances, then the medicine forced on Scotland

Neck should be forced likewise on all of the cities throughout the United States.

It is natural and to be expected that there should be substantial differences in the residential composition of urban and rural communities.

The crux of the dissents in the Court of Appeals appears to be stated clearly by Judge Sobeloff in Appendix B to the Petition for Certiorari on page 36a where he says:

> "The relevant question is what *change* in degree of integration has been effected by the creation of the new district. Here the change is an increase in the percentage of white pupils from 22% to 57%."

The 22% was the average percent of white students in the entire Halifax County School District from the latest available attendance records. The 57% was the percent of white students resident in Scotland Neck. The quoted statement assumes that 22% was the percent which the Court should require for Scotland Neck. That assumption, we submit, is not supportable.

As this Court held in the *Swann* case, *supra,* the Constitution does not require the same ratios in all areas of a district, and the Constitution does not require cross residential area integration in the absence of a distortion of residential pattern caused by State imposed segregation. As we understand it, a main point in the *Swann* decision, *supra,* is that the constitutional power of assignment out of residential area is not supported by a mere desire for integration but only by a requirement necessary to dismantle a segregation structure imposed by law. In view of the fact that there is no evidence in the record even suggesting that the Scotland Neck racial composition was the result of any State law-imposed segregation, it would seem that the comment of Judge Sobeloff is not in point.

The point made in that dissent is answered conclusively, we submit, by this Court when it said in the *Swann* case, *supra,* (bottom of page 19 and top of page 20):

> "The District Judge went on to acknowledge that variation 'from that norm may be unavoidable.' This contains intimations that the 'norm' is a fixed mathematical racial balance reflecting the pupil constituency of the system. If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole."

III. THE WHITE FLIGHT PROBLEM

The District Court's invalidation of the North Carolina Legislative Act was based solely on its determination that the Legislature, in its effort to achieve higher quality education in the Scotland Neck Schools, was motivated in part by a desire to stem or to diminish "the flight" of white students from the public schools.

The majority of the members of the Court of Appeals disagreed. The minority of the Court of Appeals and the United States in its Petition for Certiorari appeared to be indifferent to the white flight threat to schools. We submit that the majority opinion of the Court of Appeals is correct. It is certain that there is that threat and that it poses a peril to public schools. It cannot be ignored. We submit that a move to improve the quality of public education, directed in part to deterring the departure of any students from the public schools, cannot be condemned unless it invades the constitutional right of some person. If we are correct in our arguments I. and II. above, there is no constitutional invasion.

If a Legislative establishment of Scotland Neck as a separate school district arose only as a result of the motive to

establish quality education by obtaining more money and more community support, the act would have been constitutional. Then, the additional motive to stem the flight of white or black students from the schools cannot make it unconstitutional.

CONCLUSION

We submit, as we have set forth above, that the question here involved is answered by the pronouncements of this Court in *Swann v. Board of Education, supra.* Therefore, we submit that the matter should be concluded now by a denial of certiorari.

For the foregoing reasons it is prayed that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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